

***HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO**

+M.A.C.M.A. No.138 of 2005

% Dated 03.06.2014

Between:

Mala Veerapuram Babu and another ...Appellants

and

\$ Y.Krishudu and another Respondents

! Counsel for the Appellants : Sri P.Veera Reddy

^ Counsel for respondent No.1 : None appeared

Counsel for respondent No.2-

The Oriental Insurance Company : Sri V.Sambasiva Rao
Limited

< GIST:

>HEAD NOTE:

? Cases referred:

1. 2007(7) SCC 445
2. 2010(4) ALD 531
3. 2013(4)ALT 35(SC)
4. 2003(2) SCC-223
5. 2003(2) SCC-339
6. JT-2003(7) SC-520-
7. 2004(2)SCC-1
8. 2005-ACJ-721
9. 2004-ACJ-1903
10. 2008 ACJ 268 SC =(1)SCC-423
11. 2007 ACJ 1043
12. 2007 AC J 1909
13. 2007 AIR SCW 7280
14. 2013 ACJ 1
15. 2013 ACJ 199
16. 2005 ACJ 1323
17. 2011(11) SCC 554
18. (2007)7 SCC 445

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.138 of 2005

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JUDGMENT:
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Having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Anantapur (in short 'Tribunal') in M.V.O.P.No.202 of 1997 dated 22.08.2003, awarding compensation of Rs.60,000/- (Rupees sixty thousand only) for not fixing the liability against both the respondents (owner and insurer) as prayed for in the claim petition under Section 166 of the Motor Vehicles Act, 1988(in short 'the Act'), but for against the owner by exonerating the insurer, the claimants, who are parents of the deceased boy aged about 10 years as per page 3 para-7 of the award from post-mortem report and claim petition averments, also filed this appeal.

2. Heard Sri P.Veera Reddy, learned counsel for the appellants and Sri V.Sambasiva Rao, learned standing counsel appearing for the United India Insurance Company Limited and perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. Now the points that arise for consideration are:-

1) Whether the deceased boy was labourer-hamali of the owner of the lorry bearing No.AP-21/T.0015 for unloading and if so traveling on the load for unloading, if so the insurer under the policy is liable to cover the risk to compensate the claimants and if so, the award of the Tribunal holding deceased and others as unauthorized passengers requires interference to set aside or otherwise and with what observations?

2) To what result?

Point No.1:

4. The claim petition was filed claiming compensation of Rs.60,000/- consequent on death of said deceased Yesaiah, aged about 10 years who is among 15 to 20 persons travelling in the lorry sitting on the kadapa slabs load among them, 5 persons in all met with death leave about other injured therein in the motor accident. The claimants 1 and 2 are the parents of said deceased. The deceased is said to have gone as one of the coolies in the lorry for loading and unloading slabs on the date of incident and due to the rash and negligent driving of the lorry by the driver, he received injuries and died as per the evidence for the first time which is running contra to the claim petition averments that the deceased and others were proceeding to Tadipatri in the lorry and when reached Sajjaladinne about 12 noon, the accident occurred on 29-08-1996 in saying they were travelling as passengers. The first respondent remained *ex parte* and the 2nd respondent-insurance company filed a counter putting the petitioners to strict proof of rashness and negligence of the driver of the vehicle by disputing liability of the insurance company to the claim.

5. The Tribunal after considering the evidence on record found that the incident was occurred due to rash and negligent driving of the driver of the lorry, however, the deceased was traveling in the lorry as passenger and not as the person engaged for loading and unloading purpose, and therefore, exonerated the insurance company from liability. Therefrom, the Tribunal granted compensation against the first respondent-owner of the lorry as the rash and negligent driving of the driver of the lorry was proved.

6. The case of the appellants is that the deceased was in the lorry as a hamali for loading and unloading the slabs and the policy covers the risk of six hamalies traveling in the lorry and consequently the compensation should have been granted against the insurer also. The evidence of R.W.1 before the Tribunal shows that the deceased traveled as a passenger and not as a hamali or coolie. There were about 20 persons in the lorry at the time of the incident and five persons died including the boy. As per the evidence on record discussed by the Tribunal in its order at para-7 page 3 though Ex.A.1 FIR, Ex.A.4 charge sheet speak that more than 15 persons travelling in the lorry by sitting on the kadapa slabs suffice to say therefrom even of more than 15 persons were travelling and not six(6) hamalies only. Even to claim anybody among them were hamalies, the vehicle owner did not file counter with any version of him and even did not come to witness box though he is the best person to speak in this regard. The evidence clearly goes to show that the policy covers the risk of six hamalies only.

7. It is thus for the owner of the vehicle (Insured as per the policy covers risk of 6 hamalies of the vehicle) to claim for those to indemnify by the Insurer when admittedly policy covers risk for such of them. Otherwise, owner or Insurer or claimants should have sought for common disposal of all the claims of 5 deaths and several injured if to say not possible to separate and specify who among them are the hamalies and who other are the unauthorized passengers to follow the principle laid down in **National Insurance Company Limited Vs. Anjana Syam**^[1] for the Tribunal to direct the Insurer to indemnify the owner for 6 highest claims and for rest to fix liability personally on the vehicle owner and then to apportion the

liability sum fixed on the Insurer as well as the liability personally fixed on the owner of vehicle separately in proportion to the claims allowed. Even to invoke any such procedure herein, apart from some matters finalized on liability of Insurer fixed in some and not fixed in some (detailed in later paras), it arises if the deceased is proved as one of the hamalies herein and otherwise not, but for to seek review of all orders/awards of the Tribunal by any of the claimants or Insurer or owner to follow the above principle for the reason that in the social legislation if not even beneficial legislation to the victims of road accidents, the object is to render complete and substantial justice and for so to do, technicalities in procedural traits won't come in the way as laid down by Division Bench of our High Court in **Bhupati Prameela Vs. Superintendent of Police**^[2] and by the Apex Court in its expression in **Rajesh v. Rajbir Singh**^[3] (though the observations in this regard therein were in some other context).

8) In regard to the above as the evidence of petitioners to say that the deceased was engaged as hamali or a coolie for loading and unloading is quite unbelievable to any ordinary prudence from the fact that the deceased hardly of 10 to 11 years cannot even move a slab, how can he load and unload as it is not any light articles loading and unloading being heavy kadapa slabs and suffice to say he was no other than one among the unauthorised passengers if not even midway passengers as averred in the very claim petition as discussed supra. Therefore, even if the policy is to cover six persons as hamalies, that what even deposed by R.W.1 for insurer, in the absence of evidence of employment of the deceased as a hamali and the material on record and the investigation showing that the deceased was in the lorry along with 19 other 'passengers', it cannot

be said that the deceased was engaged by the owner of the lorry and the insurance company is liable to pay the compensation to the claimants.

9. As far as the legal position is concerned, as per the decisions of the Apex Court to claim liability of Insurer in a goods vehicle arises if the deceased was traveling as the owner or his representative of goods. It is otherwise as per IMT 39 and 39-A as hamali for loading and unloading since the Rule 185(X)(F)(V) of A.P.M.V.Rules,1989 also speaks that in a goods carriage for loading and unloading maximum 7 coolies can be taken. What all Rule 28 of the Central Road Traffic Rules,1989 prohibits even is carrying or taking of any person on tractor but not on trailer that too as coolies, provided there is permit and contractual liability of the Insurer. The Apex Court held in several expressions that Sec.147(1) of 1988 Act is in *pari meteria* with Sec.95 of 1939 Act and even by 1994 Amended Act, Sec.147 was amended with added words “including owner of goods or his authorized representative carried in the vehicle after the words ‘against any liability’ which may be incurred by him in respect of the death of or bodily injury to any person” as per **New India Assurance Company Limited Vs.Asha Rani**^[4], followed in **Oriental Insurance Company Limited Vs. Devireddy Kondareddy**^[5] holding that the provisions of the 1988 Act, since do not enjoy statutory liability on owner of a vehicle to get his vehicle insured for any passenger traveling in a goods carriage and the insurer therefore would have no liability. Whereas, the Apex Court in **National Insurance Company v. Ajit Kumar**^[6] held that from the difference in the language and meaning of Goods vehicle in old(1939)Act from

expression in addition to passenger and Goods carriage in new(1988)Act, solely for the carriage of goods is clear of legislative intent to prohibit goods vehicle from carrying any passenger, for no provision similar to Sec 95(2) of old(1939)Act in Sec.147 of new(1988)Act. Since sec.147 of new(1988)Act mandates compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the WC Act 1923/1924 (for hamalies for loading and unloading) as employees/workmen of the owner and thus, there is no reference of passengers in goods carriage. It is important here to take note of decision of **National Insurance Company Limited VS. Baljit Kaur**^[7] regarding passengers in goods carriage, it was held referring to 1994 MVAct, that even after 1994 amendment, the effect of Sec.147 with respect to persons other than the owner of goods or his authorized representative remain the same, since it was not the intention of the legislature to provide for the statutory liability of the insurer with respect to passengers especially gratuitous passengers in goods vehicle - neither contemplated nor to pay any premium to the extent of the benefit of insurance to such category. In this expression, it was while dealing with prospective operation of Asharani(supra) principle of law held that interest of justice be subserved under Section 168 of the Act in directing insurer to pay and recover in such cases awards passed with joint liability of Insurer following Satpal Singh's case prior in point of time to the date of Asharani's case. It was ultimately directed for pay and recovery of the passenger of goods vehicle. It is made clear that in other such cases the owner of the vehicle shall be and not insurer that is liable to satisfy the decree (unless there is a contractual liability from extra

premium). In fact in the later decision in **National Insurance Company VS. B.Subbayamma**^[8] the Apex Court cleared the cloud holding that for death of passenger in goods vehicle the High Court was wrong in directing insurer to pay, as the remedy of claimants is to recover from owner/insured alone. The apex court referred all the above decisions including **Baljit Kaur**(supra), besides **Promod.K.A. VS. M.Begum**^[9].

10. In **National Insurance Company Limited Vs. Cholleti Bharatamma**^[10], it is clearly laid down that to fasten liability on insurance company to indemnify for death of a owner/attender of goods traveling in a goods vehicle, the person must travel in the cabin and not as passenger with luggage/personal affects. A reading of the entire decision speaks that the risk is not covered unless the person traveled in the goods vehicle is owner or his representative of the goods therein. No doubt the decision of **Cholleti Bharatamma**(supra) not dealt with the hamalies and the APMV Rules providing for hamalies to travel and IMT 39 and 39-A and where even specifically policy covers risk of hamalies under the WC Act as workman and employee and in such case when covers risk, not laid down the hamali work of loading and unloading does not cover for travelling on the load for unloading leave about return after unload. In this expression of **Cholleti Bharatamma** (supra) by referring to the earlier expressions right from **Asha Rani, D.Konda reddy, Baljitkour and B.Subbayamma** (supra), **New India Assurance Company Vs. Vedavathi**^[11] and **Oriental Insurance Company Limited Vs. Brij Mohan**^[12] it was clearly held from Para 8 onwards

that, the Motor Vehicles Act, 1988 amended by Act 54 of 1994 Sec.147 since different from that of Sec.95 of the old Act 1939 in its wording as the goods vehicle in 1939 Act and the goods carriage in 1988 Act are significant and the reason of the change in terminology by legislature is intended that a goods vehicle could not carry any passenger as the words in addition to passengers occurring in old Act since omitted to mean under the new Act the goods carriage is adopted for use solely for the purpose of carriage of goods and as such, carrying passengers in goods carriage is no way contemplated by the new Act. The Act doesn't contemplate that a goods carriage shall carry large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injuries either of the owner of goods or his authorised representative. It is in the context to say every luggage and small quantity of goods of several persons cannot be considered to cover risk as owner or his attendant of goods. It is therefrom only held that injury to any person could only mean a third party and not a passenger in a goods carriage whether gratuitous or otherwise. The inevitable conclusion is that, the provisions of the Sec.147 MV Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods carriage and the insurer would have no liability thereto. In this context, it is also necessary to refer that **Vedavathi** (supra) para-6 that was discussed in **Cholleti Bhatrathamma** (supra) para-12, it does not, from the language of even Section 147 of the Act mandates compulsory coverage against death or bodily injury to any passenger of public service vehicle. This proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle could be limited to liability under the W.C.

Act. There is no reference to any passenger in goods carriage. It is thus though not referred hamalies upto six clear from the expression that if he is a workman as a person engaged, the risk covers from contractual liability.

11. A combined reading of the above expressions show that once there is a contractual coverage of risk for the six(6) hamalies to travel is admitted by R.W.1-employee of the Insurer in his evidence to cover, had the deceased such hamali, however, the fact remains that the deceased was not among the hamalies for what is discussed supra. It is also to discuss in this regard that in **United India Insurance Company Limited Vs. Serji Rao** ^[13] what the Apex Court held was Insurer is not liable to pay compensation for labourers travelling in the tractor. This Court also in MACMA No.1363 of 2011 by a learned brother judge in appeal-judgment dated 20.8.2011 came to the same conclusion of the claim by legal representatives of one of the deceased of this accident in O.P.No.200 of 1997 ended in dismissal before the Tribunal against the Insurer by exonerating, upheld the same in dismissing the appeal saying there is no evidence to show much less from the mouth of the owner even the policy covers risk of six(6) hamalies as deceased was one of such hamalies to make a claim. No doubt in another appeal CMA No.2246 of 2004 (O.P. number not given in the judgment but for injured-claimant's name as P.Janaiah), the claim awarded in same accident for Rs.70,000/- enhanced to Rs.1,00,000/- as hamali. It is therefrom to say left open by virtue of this judgment to seek review of all claims to apply the principle of Anjana Syam(supra) before the Tribunal for rendering justice to all victims. Suffice to say therefrom that there is nothing to interfere with the finding of the Tribunal so far as

exonerating the Insurer by holding non-liability, for deceased not hamali; this Court while sitting in appeal as this is the only contention raised in the appeal with no any contest regarding sufficiency or otherwise of the quantum awarded against the owner to further go into. The expression of Apex Court in **Sanjeeve Kumar Samrat Vs.National Insurance Company Limited**^[14] followed in **National Insurance Company Vs.Balakrishnan**^[15] speaks that under Section 147(1)(b)(ii) proviso 1-c death of an employee of hirer of vehicle i.e. owner of goods traveling with goods in the truck taken on hire along with goods with two labourers employed by him of the truck met with an accident where they sustained injuries and succumbed since said employees cannot be regarded as attendants of goods for owner of goods traveling and they are not the employees of Insured(vehicle owner) under the W.C.Act. to cover any statutory liability even for loading and unloading to travel, the Insurance Company is not liable under Act policy to cover risk of such employees of hirer as Act policy only covers employees of insured under the WC Act if engaged in driving the vehicle or in public service vehicle as Conductor or Ticket Examiner or in a goods carriage being carried in the vehicle with goods or for loading and unloading, otherwise to cover only contractual liability. Thus owner of goods or his authorized representative carried in a goods vehicle covered by Act policy under Section 147 without any extra premium as held in Asharani's case. As held in **National Insurance Company Vs.Prembhai Patel**^[16] the employee termed in Section 147 must be Driver or Conductor of the vehicle or Ticket Examiner of the vehicle and in case of a goods vehicle being carried in the vehicle with goods or the employees for loading and unloading. The employees must

thus be under the Insured and not of others. Thus, it is the settled law supra that the liability of Insurer for payment of compensation could either be statutory or contractual. Therefore, the Insurance Company is not under statutory obligation to cover all kinds of persons but for employees of the insured. In the latest expression of the Apex Court in similar case in **National Insurance Company Limited Vs. Savithridevi**^[17], it is held in the factual matrix that the Tata Mini Open Truck(goods carriage) engaged for a marriage party and even there was evidence of earlier this vehicle was in use for marriage parties as passenger carriage since registered as a goods carriage and policy issued for goods carriage with terms and conditions speaking not covered for organized racing pace or speed test etc., use whilst drawing a trailer except the towing (other than for reward of anyone disabled mechanically propelled vehicles) and use for carrying passengers except employees (other than the driver) not exceeding six(6) coming under the purview of W.C. Act; for no contract liability undertaken by collection of extra premium by Insurer for passengers, the Insurer is not liable to compensate. Having regard to the above, the deceased boy in this case was unauthorized passenger, whose risk not covered by the policy as rightly concluded by the Tribunal in exonerating the Insurer. Thus, for this Court while sitting in appeal, there is nothing to interfere, but for to observe that “if at all there were any hamalies engaged by owner of the vehicle (Insured) to cover the risk upto six for loading and unloading of the slabs to indemnify by the Insurer by seeking review of all cases disposed off and to adopt the principle laid down in **National Insurance Company Limited Vs. Anjana Shyam**^[18] for giving common disposal. Accordingly, Point No.1 is answered.

Point No.2:

12. In the result, the appeal is dismissed with no costs, however, with the following observations: the owner of the vehicle (Insured) as per the policy covers risk of 6 hamalies of the vehicle can claim for reopen all the matters to redetermine for those to indemnify by the Insurer when admittedly policy covers risk for such of them, if there are any of the hamalies engaged by him traveling for unloading to cover. Even to invoke any such procedure herein by this Court while sitting in appeal, apart from some matters finalized on liability of Insurer fixed in some and not fixed in some (detailed in earlier paras), it arises if the deceased is proved as one of the hamalies but not hamali being unauthorized passenger as concluded supra, for dismissal of the appeal with the observations as left open to seek review of all orders/awards of the Tribunal by any of the claimants or Insurer or owner to follow the above principle in Anjana Shyam(supra) for the reason that in the social legislation if not even beneficial legislation to the victims of road accidents, the object is to render complete and substantial justice and for so to do, technicalities in procedural traits won't come in the way as laid down by Division Bench of our High Court in **Bhupati Prameela Vs. Superintendent of Police**^[19] and by the Apex Court in its expression in **Rajesh v. Rajbir Singh**^[20] (though the observations in this regard therein were in some other context). Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

B.SIVA SANKARA RAO, J.

Dt.03.06.2014

Note: L.R.Copy marked.

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- [1] 2007(7) SCC 445
[2] 2010(4) ALD 531
[3] 2013(4)ALT 35(SC)
[4] 2003(2) SCC-223
[5] 2003(2) SCC-339
[6] JT-2003(7) SC-520-
[7] 2004(2)SCC-1
[8] 2005-ACJ-721
[9] 2004-ACJ-1903
[10] 2008 ACJ 268 SC =(1)SCC-423
[11] 2007 ACJ 1043
[12] 2007 AC J 1909
[13] 2007 AIR SCW 7280
[14] 2013 ACJ 1
[15] 2013 ACJ 199
[16] 2005 ACJ 1323
[17] 2011(11) SCC 554
[18] (2007)7 SCC 445
[19] 2010(4) ALD 531
[20] 2013(4)ALT 35(SC)